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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/767,782	01/28/2004	Steve A. Yon	135001	7291

7590 12/28/2005

Mayer Fortkort & Williams  
251 North Avenue West  
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EXAMINER

GIBSON, ROY DEAN

ART UNIT PAPER NUMBER

3739

DATE MAILED: 12/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

SP

<b>Office Action Summary</b>	<b>Application No.</b> 10/767,782	<b>Applicant(s)</b> YON ET AL.	
	<b>Examiner</b> Roy D. Gibson	<b>Art Unit</b> 3739	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 03 October 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-21, 23-41, 44 and 46-63 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-21, 23-41, 48, 55-59, 61 and 62 is/are allowed.
- 6) ☒ Claim(s) 44, 46-54, 60 and 63 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Claim Rejections - 35 U.S.C. § 112***

Claims 44, 46-54, 60 and 63 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 44 recites the limitation "return lumen" in line 10. There is insufficient antecedent basis for this limitation in the claim. Correction is required.

### ***Claim Rejections - 35 U.S.C. § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 44, 46, 47, 49, 51, 60 and 63 are rejected under 35 U.S.C. 103(a) as being unpatentable over Saab (5,624,392).

As to claims 44, 46-47, 60 and 63, Saab disclose a heat transfer catheter comprising:

a catheter coupled to a source of working fluid and a distal end coupled to a heat transfer element (Figure 3, balloon segment 72 or segment 86 in Figure 9, typically made of a polymer);

a supply lumen coupled to the source of working fluid and a distal end terminating within the heat transfer element; a return lumen wherein the supply and return lumens are coaxial, and wherein the supply lumen is within the return lumen (Figures 2, 3, 5 and 9, col. 11, line 62-col. 13, line 20 and col. 15, line 36-col. 16, line 11).

But, Saab fails to disclose a temperature sensor (thermistor or thermocouple) disposed on or within the heat transfer element. However, the examiner maintains that such sensors are extremely well known in the art and that it would have been obvious to a skillful artisan to provide a temperature sensor on or within the heat transfer element to monitor the temperature and generally provide control of the fluid thereby.

As to claims 49 and 51, Saab discloses a guidewire lumen (11) disposed within the catheter and a guidewire (13), the guidewire lumen coupled to the supply lumen and partially terminating proximal of the guidewire lumen and wherein the distal tip of the guidewire lumen is coupled to the distal tip of the heat transfer element (Figure 1, 3 and 9).

#### **Allowable Subject Matter**

Claims 1-21, 23-41, 48, 55-59 and 61-62 are allowed.

Claims 50 and 52-54 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

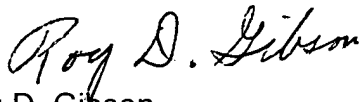
### Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Eshel (5,257,977) discloses a heat transfer catheter with coaxial supply and return lumens which anticipates claim 44 with again an obvious temperature sensor.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Roy D. Gibson whose telephone number is 571-272-4767. The examiner can normally be reached on Tu-Th, 7:30 am-4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda Dvorak can be reached on 571-272-4764. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Roy D. Gibson  
Primary Examiner  
Art Unit 3739

December 23, 2005